

Ordinance No:  
Zoning Text Amendment No: 05-04  
Concerning: MPDUs –finding of financial  
infeasibility  
Draft No. & Date: 3 – 5/5/05  
Introduced: March 22, 2005  
Public Hearing: April 26, 2005  
Adopted:  
Effective: April 1, 2005

**COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND  
SITTING AS THE DISTRICT COUNCIL FOR THAT PORTION OF  
THE MARYLAND-WASHINGTON REGIONAL DISTRICT WITHIN  
MONTGOMERY COUNTY, MARYLAND**

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By: Councilmember Silverman

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**AN AMENDMENT** to the Montgomery County Zoning Ordinance for the purpose of:

- Clarifying the process for allowing an exception for reasons of financial infeasibility to certain conformity requirements regarding residential density or building height in certain zones for a development that includes MPDUs on-site.

By amending the following section of the Montgomery County Zoning Ordinance, Chapter 59 of the Montgomery County Code:

DIVISION 59-D-1	“DEVELOPMENT PLAN”
Section 59-D-1.6	“Approval by district council”
DIVISION 59-D-2	“PROJECT PLAN FOR OPTIONAL METHOD OF DEVELOPMENT, CBD ZONES AND RMX ZONES”
Section 59-D-2.4	“Action by planning board”
Section 59-D-2.42	“Findings required for approval.”

**EXPLANATION:** **Boldface** indicates a heading or a defined term.  
Underlining indicates text that is added to existing laws by the original text amendment.  
**[Single boldface brackets]** indicate text that is deleted from existing law by the original text amendment.  
Double underlining indicates text that is added to the text amendment by amendment.  
**[[Double boldface brackets]]** indicate text that is deleted from the text amendment by amendment.  
\* \* \* indicates existing law unaffected by the text amendment.

## OPINION

Zoning Text Amendment (ZTA) No. 05-04 was introduced on March 22, 2005, to clarify the process for allowing an exception to certain master plan, sector plan, and urban renewal plan conformity requirements regarding density and building height for a development that includes MPDUs on-site. The amendment, along with similar amendments in Expedited Bill 4-05 and Subdivision Regulation Amendment 05-01, would modify the Alternative Review Committee (ARC) created in 2004 by replacing the Chair of the Planning Board with the Director of Park and Planning and by allowing the 3 members (the others are the Director of the Department of Housing and Community Affairs (DHCA) and the Executive Director of the Housing Opportunities Commission (HOC)) to be represented by designees. This amendment and SRA 05-01 would also redraft the financial infeasibility provisions enacted in 2004 -- which allow the Planning Board to take certain actions if the ARC finds that applicable master plan height or density limits would make the construction of all required MPDUs in a proposed development financially infeasible -- to clarify their intent and effect without altering their substance.

The Montgomery County Planning Board in its report to the Council recommended that the text amendment be approved with a minor modification.

The County Council held a public hearing on April 26, 2005, to receive testimony concerning the proposed text amendment. The text amendment was referred to the Planning, Housing, and Economic Development Committee for review and recommendation.

The Planning, Housing, and Economic Development Committee held a worksession on May 4, 2005, to review the amendment. The Committee unanimously recommended enactment of the amendment with further clarifying changes. The Committee emphasized that it does not expect the members of the ARC to routinely delegate their duties on this body to designees, as this and the similar amendments would authorize; rather, the members should participate personally in the ARC's deliberations unless an illness or other emergency, a potential conflict of interest, or a comparable exigent circumstance requires a member to delegate his or her duties to a designee.

The District Council reviewed Zoning Text Amendment No. 05-04 at a meeting held on May 18, 2005, and supported the recommendations of the Planning, Housing, and Economic Development Committee.

For these reasons and because to approve this amendment will assist in the coordinated, comprehensive, adjusted, and systematic development of the Maryland-Washington Regional District located in Montgomery County, Zoning Text Amendment No. 05-04 will be approved as revised.

## ORDINANCE

*The County Council for Montgomery County, Maryland, sitting as the District Council for that portion of the Maryland-Washington Regional District in Montgomery County, Maryland, approves the following ordinance:*



28 find that [construction of] a development that includes all required  
29 MPDUs on site, including any bonus density units, would not be  
30 financially feasible within the constraints of any applicable density or  
31 height limit. If ~~[[a finding of financial infeasibility is made]]~~ the  
32 Committee finds that the development would not be financially  
33 feasible, the Planning Board must [determine] ~~[[decide]]~~ recommend  
34 to the District Council which if any of the following measures  
35 authorized [under] by Chapter 59 or Chapter 50 should be approved to  
36 [accomplish] assure the construction of [the] all required MPDUs on  
37 site:

- 38 (1) exceeding an applicable height limit, lower than the maximum  
39 height in the zone, that was recommended in a master plan or  
40 sector plan ~~[[height limit]]~~,
- 41 (2) exceeding an applicable residential density limit, lower than the  
42 maximum density in the zone, that was recommended in a  
43 master plan or sector plan ~~[[residential density limit]]~~, or
- 44 (3) locating any required public use space off-site.

45 \* \* \*

46 **Sec. 2. Division 59-D-2 is amended as follows:**

47 **DIVISION 59-D-2. PROJECT PLAN FOR OPTIONAL METHOD OF**  
48 **DEVELOPMENT, CBD ZONES AND RMX ZONES.**

49 \* \* \*

50 **59-D-2.4. Action by Planning Board.**

51 \* \* \*

52 **59-D-2.42. Findings required for approval.**

53 The fact that an application complies with all of the specific requirements  
54 and intent of the applicable zone does not create a presumption that the

55 application must be approved. The Planning Board can approve, or approve  
56 subject to modifications, an application only if it finds that the proposed  
57 development meets all of the following requirements:

58 \* \* \*

59 (b) It would conform to the applicable sector plan or urban renewal plan.  
60 However, to [accommodate] permit the construction of all MPDUs  
61 required under Chapter 25A, including any bonus density units, on-  
62 site, a project plan may exceed, in proportion to the MPDUs [provided  
63 under Chapter 25A] [[that would]] to be built on site, including any  
64 bonus density units, any applicable residential density or building  
65 height limit established in a master plan or sector plan if a majority of  
66 an Alternative Review Committee composed of the Director of the  
67 Department of Housing and Community Affairs, the Executive  
68 Director of the Housing [Opportunity] Opportunities Commission,  
69 and the [Chair of the] Director of Park and Planning [Board], or their  
70 respective designees, find that [construction of] a development that  
71 includes all required MPDUs on site, including any bonus density  
72 units, would not be financially feasible within the constraints of any  
73 applicable density or height limit. If [[a finding of financial  
74 infeasibility is made]] the Committee finds that the development  
75 would not be financially feasible, the Planning Board must  
76 [determine] decide which if any of the following measures authorized  
77 [under] by Chapter 59 or Chapter 50 should be approved to  
78 [accomplish] assure the construction of [the] all required MPDUs on  
79 site:

- 80 (1) exceeding an applicable height limit, lower than the maximum  
81 height in the zone, that is recommended in a master plan or  
82 sector plan [[height limit]],
- 83 (2) exceeding an applicable residential density limit, lower than the  
84 maximum density in the zone, that is recommended in a master  
85 plan or sector plan [[residential density limit]], or
- 86 (3) locating any required public use space off-site.

87 **Sec. 2. Effective date.** This ordinance takes effect as of April 1, 2005.

88 This is a correct copy of Council action.

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Linda M. Lauer

92 Clerk of the Council

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